IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

(1) Writ Petition No.5732 of 2006
with
Civil Application no.2619 of 2007

R.T.Parwani ..Petitioner

vs.

1. The Secretary, Relief and Reghabilitation Revenue and Forest Department and others ..Respondents

Petitioner in person.
Shr A.A.Kumbhakoni, Associate Advocate General i/b Shri M.P.Thakur, A.G.P. for respondent nos.1 to 3

(2) Writ Petition No. 5834 of 2006
and
(3) Writ Petition No.1877 of 2007

Smt.Padmavati Bhalchandra Sachdeo and others ..Petitioners

vs.

Secretary, (Relief and Rehabilitation) Govt.of Maharashtra and ors. ..Respondents

Shri P.K.Dhakephalkar, Sr.Advocate with Shri J.S.Chandnani for petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General i/b Shri M.P.Thakur for respondents State.
Shri A.N.Maniar for respondent no.6 in W.P.No.5834 of 2006

CORAM: S.C.DHARMADHIARI J.
7th December, 2007

P.C.

1. These writ petitions are directed against the orders passed on 23rd June, 2003 and 21st

December, 2005, the copies of which are annexed at Exh.E and Exh.F respectively.

2. The facts are set out in sufficient details in these orders. The petitioner had approached this Court by filing Writ Petition being Writ Petition No.920 of 2000 requesting it to direct the Collector, Thane to hand over certain agricultural lands situated in Thane, Kalyan and Bhiwandi Tahsils of Thane District.

3. The petitioner pointed out that one Shivandas Hotaldas Sachdeo was displaced person and he was allotted 24/14/4/5 standard Acre of land at Amreli (Gujarat) by Regional Settlement Commissioner for satisfying his verified land claim, compensating the properties left by him in West Pakistan. The said allotment was cancelled by the Chief Settlement Commissioner, New Delhi, on the application made by Shri Shivandas. By order dated 18th January, 1964, Chief Settlement Commissioner directed the Regional Settlement Commissioner to grant him alternative land. The petitioner Shri Parvani's further contention was that section 8 of the Displaced Persons Act, 1954 provided for

determination of compensation payable to displaced persons, it becomes debt payable by the Central Government to the displaced persons. In this view of the matter, the claim becomes an actionable claim and assignable as such under the Transfer of Property Act. Since long time was taken by the State to settle the claim, several such persons sold their actionable claim in open market which could be purchased by any person or a displaced person.

4. In consideration of the assignment of claim made by Shri Shivandas, a sum of Rs.9,660.94 was paid and he endorsed a receipt at the foot of the assignment dated 6th March, 1964. This is assignment infavour of the petitioner Shri Ramesh T.Parwani. In pursuance of this, he approached the authorities for satisfaction of the claim. Accordingly, the Regional Settlement Commissioner allotted the agricultural land situated at the place mentioned in the order. The petitioner was not put in possession of some of the alternate lands. As regards remaining land, he obtained vacant possession and appropriated the land to himself. However, some land remained to be received as per the

assignment executed in his favour and that is how he requested that the remaining land be also handed over. He pointed out that the issue as to whether Agricultural lands which was subject matter of the allotment in favour of the displaced persons, are covered by the Bombay Tenancy and Agricultural Lands Act or not was highly contested right upto the Hon'ble Supreme Court and in 1997, it was held that the occupant of the evacuee agricultural land is not entitled to any protection and he can be removed so that vacant possession is handed over to the displaced persons.

5. After this law was declared by the Hon'ble Supreme Court, the petitioner points out that he approached the Collector as well as Managing Officer for grant of vacant possession of the remaining land. The possession was not given but a dispute was sought to be raised by the occupants thereof. Yet, the authorities assured him that vacant possession would be granted but on some or the other grounds the obligation of the authorites was not discharged by them and that is why he corresponded with the authorities and later on filed the above writ petition. The

writ petition was disposed of with directions to the authorities to hand over vacant and peaceful possession.

6. He has pointed out that several persons had claimed the said land and sought to intervene in the writ petition by filing civil applications or separate writ petitions. A reference is made to all these proceedings in the order dated 23rd June, 2003.

7. A detailed reference is also made to an order passed by this Court on 1st March, 2002 in Civil Application No. 3431 of 2000 in the above writ petition. That was the application by one Shri Manohar B.Sachdeo claiming to be the legal heir of the said Shivandas. There are also references to other civil applications including those preferred by the Respondent No.6 in Writ Petition No. 5834 of 2006.

8. The Authorities thereafter proceeded to implement the order and directions of this Court and taking note of the contentions which have been advanced, the points were framed for determination. The order that was finally

passed is that the lands in questions were granted to Shivandas upon his claim being of displaced person. He has sold all these lands to other persons and considering the intervening rights the claim of the present petitioner based upon the deed of assignment does not come within the purview of the powers conferred and delegated to the authorities. Consequently, it is directed that the order dated 6th February, 1965 issued in favour of late Shivandas be implemented and vacant possession be handed over to the legal heirs of late Shivandas.

9. A revision application was preferred against these orders by the present petitioner and some of the respondents to this writ petition. The facts have been mentioned therein in great detail. The Revisional Authorities took a view that though Shivandas is a displaced person, the revision applicants before him could not produce the original letter of allotment of evacuee land. What has been produced is a certified copy of the order passed in favour of Shivandas. This is a not an authentic evidence of fact of allotment. However, Shivandas got possession of a substantial portion of the land on the basis

of this allotment order and, therefore, the same can be presumed to be legitimate and valid.

10. In so far as the petitioner Parwani is concerned, the finding is as follows.

> "1. Though Shri Shivandas Hotaldas Sachdeo is a displaced person, he has not produced the original letter of allotment of the evacuee land. What has been produced before this authority is a certified copy of the order passed in favour of Shri Shivandas Hotaldas Sachdeo. This is not the most authentic evidence of the allotment. However, the fact that Shri Shivandas Hotaldas Sachdeo got possession of a substantial portion of this land lends credence to the legitimacy and validity of the allotment. It must, however, be said that the conclusive evidence of the allotment of the said lands is not available in records.
>
> 2. In response to the claim of Shri R.T.Parwani that he has purchased the

claim of Shri Shivandas Hotaldas Sachdeo through the execution of power of attorney and hence he should get the possession of these properties, it needs to be mentioned that the genuineness of the Power of Attorney is the subject of dispute here. While Shri Sachdeo mentions that no such claim has been purchased by Shri Parwani, Shri Parwani contends that he has got his rights over these lands on the basis of purchase of these claims. The genuineness of this document on the basis of which the transaction between these parties has been conducted is beyond the jurisdiction of this authority. The legal dispute related to the genuineness of the document or otherwise needs to be settled only by a Civil Court. We would, therefore, not be able to pronounce upon the claim made by Shri Parwani which has supposedly accrued through the purchase of the claim of Shri Shivandas Hotaldas Sachdeo."

Concluding the discussion on these lines, the

Secretary, Relief and Rehabilitation, Revenue and Forest Department (Revisional Authority) held that the order of the Settlement Commissioner challenged before him is liable to be partially modified. The Revisional Authority concluded that the claim of Shivandas is only of presumptive value and not a conclusive fact. However, in so far as the present petitioner is concerned, it declined to grant any relief.

11. It is in these circumstances that the Writ Petition No.5732 of 2006 has been preferred.

12. Writ Petition No.5834 of 2006 is filed by the heirs of Shivandas challenging the above conclusions in the orders. The two writ petitions filed by the heirs of Shivandas are with regard to distinct land. They are aggrieved by the finding in so far as the presumptive value of the letter of allotment dated 6th February, 1965 in favour of Shivandas so also the fact that the Regional authorities relegate them to Revenue Authorities for the purpose of proving that the properties in question are Evacuee properties.

13. This Court has directed that all the petitions be taken together. Accordingly after reply and rejoinders were filed all the petitions were placed for admission.

14. Initially a debate was raised whether these petitions are to be placed before the Division Bench but later on the issue has been clarified and the matters pertain to a single Judge. Shri Kanuga, learned Advocate for the petitioner R.T.Parwani after concluding his submissions, had sought an adjournment to take instructions from the petitioner with regard to the course of action to be adopted in the light of the findings which are essentially factual. Shri Kanuga lateron informed the Court that the petitioner had lost faith in him and has communicated to him accordingly. Shri Kanuga, therefore, sought leave to withdraw his appearance and was accordingly permitted to withdraw his appearance. Subsequently, the petitioner filed the written submissions and stated before me that he appears in person but does not wish to make any oral submissions.

15. Shri Dhakephalkar, learned Senior Counsel

appears for the petitioner in other petitions whereas Shri Maniar appeared for one Shri Idris Abdul Rehman Makba.

16. I have heard the learned Counsel appearing for the parties and also perused the written submissions. The petitioner's written submissions proceed on the basis that the issue before the Settlement Commissioner with regard to authenticity and genuineness of the letter of allotment so also the claim of the petitioner could not have been brushed aside and rejected after the decision of the Division Bench of this Court, which is clear. In any event, he submits that the order dated 1st March, 2000 in Writ Petition No.920 of 2000 is still valid and subsisting. It is submitted that Civil Application Nos. 3431, 4043 and 4047 were moved by the parties in the said writ petition. They have been disposed of by the Division Bench consisting of His Lordship Shri Justice A.P.Shah (As His Lordship then was) and Shri Marlapalle J. The matter was carried to the Hon'ble Supreme Court again and by common order the Special Leave Petition was disposed of with the following order.

> "Learned Senior Advocate appearing for the petitioner submits that there are certain observations made in the course of the impugned order which may affect the ultimate outcome of the proceedings before the Settlement Commissioner or any other authority. It is unnecessary to deal with this aspect of the matter in view of the fact that the High Court itself has kept open all the contentions for consideration before the settlement commissioner or any other authority subject to this observations the Special Leave Petitions are dismissed."

17. In such circumstances, according to the petitioner, all contentions being open for consideration before the Settlement Commissioner, there is no question of Settlement Commissioner declining to adjudicate upon the dispute and passing appropriate orders and also reliefs in the interest of justice.

18. Therefore, the submission is that the Regional Authority is not the one who could have

decided the Revision Application in question. The decision is rendered without jurisdiction.

19. In any event the finding of the Revisional Authority is some what confusing to say the least. The Revisional Authority could not have concluded that the Revenue Authorities must go into the authenticity and validity of the allotment. Further, the claim has been rejected on the ground that the assignment in favour of the petitioner R.T.Parwani is not acceptable. There is a dispute about its genuineness and which must be settled by the civil Court. The other petitioners have also assailed the findings in para 8 of the order of the revisional authority.

20. I have perused the petition and annexures thereto so also the impugned order. I have also perused the affidavits filed in reply and rejoinder.

21. It is pertinent to note that there is no dispute about the fact that an order was passed by this Court on 1st March, 2000 settling the issue of displaced persons being granted

Agricultural land and such land acquiring the status of Evacuee agricultural land. Therefore, this Court directed that the said land be allotted to the petitioner who is the writ petitioner before me in writ petition no.5732 of 2006. That writ petition was, therefore, disposed of. However, certain civil applications were filed and the applicants made a grievance that the order dated 1st March, 2000 was obtained by misleading the court and suppressing material facts. The order on the civil application is dated 22nd June, 2000. The Division Bench in the said order observed thus:

> "The original petitioner Ramesh Parwani claims to be the assignee of one Shivandas. There is no dispute that the said Shivandas was a person migrated from Pakistan and he was held to be eligible for compensation under the Administration of Evacuee property Act, 1950. The petitioner has relied upon the order dated 6th February, 1965 passed by the Regional Settlement Commissioner, Bombay, whereby certain lands situated in Thane District were

allotted to the said Shivandas. The petitioner claims that said Shivandas had executed an agreement of assignment in his favour on 6th March, 1964. It is further claimed by the petitioner that right from the year 1969 till 1998, petitioner was applying the concerned authorities for allotment of the lands in terms of the order dated 6.2.1965. There is not an iota of evidence to show that any such application was made by the original petitioner before the competent authority during the said period. It seems that the application was made by the original petitioner for the first time in January, 2000. Thereafter the petitioner straightway moved this Court by way of Writ Petition No. 920 of 2000 and the order was passed in terms of the minutes of order. The learned counsel appearing for the applicants pointed out that the alleged document of assignment has seen the light of the day after 35 years. The applicants have alleged that the document of assignment is highly

suspicious and appears to be fabricated document and the said document does not create any interest in favour of the original petitioner. The applicants contend that even assuming that the agreement of assignment is genuine document, in the absence of registration under section 17(1)(b) the said document is not admissible in evidence. The applicants in Civil Application No.4057 of 2000 have stated that the property in their possession is not the evacuee property. It is also brought to our notice that in respect of some of the lands dispute of title is pending in the Writ Petition No.4385 of 1986. On the other hand, the learned counsel appearing for the original petitioner contended that what was assigned was right to claim compensation and not immovable property and, therefore, the document does not require registration. Reliance is placed on the decision of the learned single Judge of this Court in case of Khudabedi Bhaibund Cooperative Credit Bank Ltd. Vs.

N.S.Verma Regional Settlement Commissioner and others reported in A.I.R.1962 Bombay 121. It is also contended by the learned Counsel for the applicants that in view of the agreement of assignment dated 6.3.1964 the petitioner is entitled to possession of the property in terms of the order of the Settlement Commissioner. In our opinion all these issues cannot be decided in a Writ Petition in January, 2000 is still not decided by the Collector. We are of the opinion that this Court has no power to determine the rights either of the ptitioner as assignee or of the applicants in the Civil Applications. All the parties agreed that the competent authority i.e.the Authorised Settlement Commissioner be directed to decide the dispute between the parties before whom the parties can agitate their respective rights and contentions.

4. In the above circumstances we direct the Collector of Thane to forward the

petitioner's application of January, 2000 to the Authorised Settlement Commissioner who shall hear all the concerned parties including the applicants in the Civil Applications and pass appropriate orders within a period of six months from today. All contentions of respective parties are kept open. The order passed by the Divisionh Bench on 1st March, 2000 is recalled. Civil Application Nos.3431 of 2000, 4043 of 2000 and 4057 of 2000 as also the Writ Petition No. 920 of 2000 stand disposed of.

5. We wish to make it clear that any transfer made by the occupants shall be subject to the decision of the Authorised Settlement Commissioner.

6. The parties and the authorities to act on the ordinary copy of this order duly authenticated by the personal secretary of this Court."

A bare perusal of the order of the Division

Bench makes it clear that the Division Bench has in the case of the present petitioner itself observed that he has been claiming on the basis of assignment in his favour. That assignment is dated 6th March, 1964. The petitioner was applying from 1969 till 1990 to the concerned authorities for allotment of land in terms of the order dated 6th February, 1965. However, not an iota of evidence has been produced to show that any application was made by the original petitioner before the competent authority. The application was made for the first time in January,2000. Thereafter the petitioner straightway moved this Court by filing writ petition no.920 of 2000 and minutes of order were passed.

22. This Court took notice of the arguments of the applicant in Civil Application that the alleged deed of assignment is suspicious and appears to be fabricated and does not create any interest in favour of the original petitioner. This Court, therefore, observed that from 2000 the matter is not decided by the Collector. The parties before this Court prayed that the competent authority be directed to decide the

dispute between the parties before whom the respective rights and contentions can be agitated. It is in such circumstances that the matter was directed to be heard by the said authority.

23. While on this issue, it would be pertinent to note that each of the applicant before this Court had pointed out that the petitioner Parwani has absolutely no right title or interest in the property and further pointed out that except the applicants and others no one was looking after and managing the affairs pertaining to the property including the litigation by heirs of the original allottee Shivandas. Their specific case was that the alleged document dated 6th March,1964 does not create any right, title and interest in favour of the said Parwani. The person concerned namely Shri Parwani did nothing for atleast 35 to 40 years and suddenly came before the Court and produced the deed of assignment.

24. It is in the light of this highly contentious issue, to my mind, the Settlement Commissioner and Revisional Authority committed

no error in holding that the genuineness and authenticity of the deed of assignment dated 6th March, 1964 has to be proved by the parties by approaching the competent civil Court. The Settlement Commissioner would not be in a position to give effect to the order dated 6th February, 1965. Highly contentious issue being raised does not mean that the Settlement Commissioner was obliged himself to go into the same. He thought it fit that he cannot displace the competent civil court in so far as the dispute with regard to the genuineness of the deed of assignment is concerned. His observation proceeds on the basis that the dispute is between the said R.T.Parwani and heirs of Shivandas. This is a dispute inter se between the petitioners in Writ Petition No. 920 of 2000 and the applicants in Civil Application before this Court. In such a dispute, the Civil Court only can intervene. Its jurisdiction cannot be said to be ousted by any statutory provision considering the nature of the dispute. Once the right, title and interest of the petitioner to the immovable properties is based upon this deed of assignment then relegating him to prove the genuineness and

authenticity thereof by approaching the civil court cannot be said to be perverse or ex facie illegal exercise of jurisdiction. Considering the long time gap and further record being scattered so also the fact that the petitioner claims right on the basis of the said assignment after nearly 25 to 30 years, then, directing him to approach the competent civil court cannot be said to be an approach which is totally arbitrary as contended. The authorities have not abdicated their duty as contended by Shri Kanuga. On the other hand, the authorities have agreed to give effect to and implement the order of 6th February, 1965 after the rights are adjudicated by the competent civil court only in so far as the deed of assignment is concerned. In such circumstances, the impugned order does not require any interference under Articles 226 and 227 of the Constitution of India. The argument that the authorities themselves were directed to decide the dispute by taking recourse to sec.26 of the Displaced Persons Act, 1954 is misconceived. The direction of this Csourt to decide does not mean that the Authorities under the Act must themselves go into the validity and genuineness of the Deed of

Assignment. If the issues requires indepth investigation and leading of evidence and the Civil Court's jurisdiction is not totally ousted is the contention, then, their direction to approach a civil Court cannot be faulted.

25. In so far as the other petitions are concerned, they are filed by the heirs of the said Shivandas. The authorities themselves observe that he is displaced person. However, the authorities thereafter had referred to the grievance of others. In so far as the heirs of the said Shivandas are concerned, the Regional Authority does not go into the same at all. It refers to the claim of the heirs. However, the respondents thereafter refer to the proceedings before the M.R.T. and revenue authorities. To my mind, in so far as the mutation entries are concerned, it relegates the parties to the authorities under the Maharashtra Land Revenue Code. The Chief Settlement Commissioner has in para 7 of the order passed by him on 23rd June, 2000 observed thus:

> "As per the above directions of the Hon'ble High Court, Mumbai and after

taking over the charge of the Post of Settlement Commissioner, the matter was fixed for hearing on 14th August, 2001 and after that, hearings were fixed from time to time. All the parties except Shri Ramesh T.Parwani appeared for the hearings before me. Shri Parwani in response to the notice of hearing submitted application dated 26.8.2001 stating therein that "the applicants in Civil Application No.3431 of 2000 along with some other parties mislead the High Court by producing fraudulent documents and have obtained the orders pursuant to which you have proposed to hold the present hearing" he further pointed out that he has already filed a Review Application against the orders dated 22.6.2000 and inspite of these facts the Settlement Commissioner has wrongly fixed the hearing. He further states that Shri Manohar Bhalchandra Sachdeo has filed a C.A.No.1029 of 20012 in Writ Petition No.1268 of 2001 concerning the same property which is pending in the High Court, these matters are likely to

> be heard in the near future, in these circumstances he requested to postpone this enquiry till these matters are heard and disposed of finally by the Bombay High Court." On going through this office records it is seen that the Hon'ble High Court has not given any stay order against the proceedings, therefore, I have heard the remaining parties who have filed their says in writing. "

26. It is on this basis that Shri Dhakephalkar urges that the order dated 31st December, 2005 apart from being vitiated on account of breach of principles of natural justice is also contrary to law. He submits that the review petition was filed but the same was not entertained. The principal submission is that no hearing was given. The events during the course of the proceedings have been pointed out. It is also stated that the issues are within the exclusive jurisdiction of the authority. Once the property is declared to be an evacuee property no civil or revenue court has jurisdiction to go into the question of the

implementation and execution of such declaration. Therefore, the Chief Settlement Commissioner as also the Revisional Authority could not have directed the petitioner/heirs of Shivandas to go before the revenue authorities or the civil court in so far as the issue of nature of the properties. The civil Court could not give any declaration with regard to the properties being evacuee properties or not. My attention is invited to the Acts and Rules in this behalf. Shri Dhakephalkar's submission is that the entire approach is faulty and it is pointed out that Shivandas was handed over other properties. Shivandas had sold some of them. At no stage, the nature of the property was in dispute. In such circumstances, calling upon the parties to approach the revenue authorities is ex facie erroneous.

27. In my view there is substance in this contention in as much as the Chief Settlement Commissioner and the Revisional Authority had to go into the issue if at all it was raised before them. In so far as the properties being evacuee properties or not, the said dispute was never raised. The matter proceeded on the basis of

the letter of allotment dated 6th February, 1965. In such circumstances and when the letter of allotment has been acted upon substantially there was no occasion to give directions to the parties to approach the revenue authorities. Therefore, the order of the revisional authority in sofar as it differs with the Chief Settlement Commissioner on this issue needs to be modified and would accordingly stand modified.

28. To that extent writ petition no.5834 of 2006 and writ petition no.1877 of 2007 succeed. If letter of allotment dated 6th February, 1965 is not available in original and certified true copy was produced by the petitioner and once I hold that the said letter has been implemented substantially, it was, therefore, not necessary for the revisional authority to have directed the petitioner to take steps by approaching the competent authorities and get the original produced. The observation was clearly uncalled for and more so, when the Settlement Commissioner does not dispute its authenticity. Therefore, when the Settlement Commissioner held that the order dated 6th February, 1965 issued in favour of late Shivandas shall be implemented

and vacant possession be given to his heirs as per the provisions of Rule 58 unless something grave and serious was pointed out so as to vitiate the entire process, it was not necessary for the revisional authority to have doubted the authenticity of the letter of allotment. The following observations, therefore, in the order of the revisional authority were wholly unnecessary:-

> "Though Shri Shivandas Hotaldas Sachdeo is a displaced person, he has not produced the original letter of allotment of the evacuee land. What has been produced before this authority is a certified copy of the order passed in favour of Shri Shivandas Hotaldas Sachdeo. This is not the most authentic evidence of the allotment. However, the fact that Shri Shivandas Hotaldas Sachdeo got possession of a substantial position of this land lends credence to the legitimacy and validity of the allotment. It must, however, be said that the conclusive evidence of the allotment of the said lands is not

available in records."

The heirs also need not approach the revenue authorities in sofar as this aspect is concerned. The order passed by the Settlement commisasioner, therefore, holds the field and in sofar as the heirs of late Shivandas are concerned, the letter of allotment must be implemented. This writ petition, therefore, succeeds. However, it is clarified that the directions in this writ petition shall not in any manner prevent Shri R.T.Parwani from approaching the competent civil court on the aforesaid issue nor shall it prevent the said Makba from also approaching the competent civil court with regard to the authenticity and genuineness of the deed of assignment and asserting such rights in the property as are permissible in law. Shri Makba is claiming land survey no.14 of village Kalwa, District Thane. His claim is on the basis that the property is his ancestral property and cannot be allotted to Shivandas Hotaldas Sachdev. As and when such issue is raised by him, it would be open for the heirs, if they are impleaded as parties or Shri R.T.Parwani to urge that the civil Court cannot

reopen the said issue and that it will have no jurisdiction to go into the question as to whether the property concerned is evacuee property or not. Such pleas are kept open to be raised and remained unaffected by the present order.

29. In the result writ petition no.5732 of 2006 fails and is dismissed. Civil application is disposed of in the above terms. No order as to costs.

(S.C.DHARMADHIKARI J.)